

REMARKS

The correspondence address for this application has been changed. This change has been implemented by filing a Request for Customer Number Data Change for Customer Number 33109, with which this application is associated. For the convenience of the Examiner, the new correspondence address is:

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35 U.S.C. §102

MPEP 2131 quotes Verdegaal Brothers v. Union Oil of California, 814 F.2d 628, 631 (Fed. Cir. 1987) for the legal standard of anticipation: "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (emphasis added).

Claims 1, 10-16, 18

Claim 1 has been amended. Amended claim 1 claims, among other elements, a method for anastomosis comprising "forming an incision in [a] target vessel; placing incision tensioners within the incision in the target vessel; tensioning the incision in the target vessel with the incision tensioners; grafting the graft vessel to the target vessel while the incision is tensioned; and removing the incision tensioners from the incision after the grafting." The incision tensioners may be connected to or formed into a bracket, frame, tube or other structure that is too large to remain in the patient after grafting the graft vessel to the target vessel. (e.g., Figures 3A, 7A, 7B, 14A-15B; page 11, lines 2-9; page 15, lines 5-12; page 19, lines 3-9). Thus, the incision tensioners are necessarily removed after the anastomosis is completed. Where the incision tensioners are balloons, those balloons cannot remain in the

patient in the inflated configuration in the lumen of the graft vessel after the anastomosis is completed, and are necessarily removed from the incision after grafting the graft vessel to the target vessel. (*e.g.*, Figure 6B; page 14, line 18 through page 15, line 4). If the balloons did remain in the lumen of the target vessel, they would block it and render the anastomosis useless. Thus, the incision tensioners may be removed from the incision in the target vessel after grafting the graft vessel to the target vessel.

In contrast, U.S. Pat. No. 6,179,849 to Yencho et. al. (“Yencho”) neither discloses nor suggests each and every element of claim 1. Yencho teaches an anastomosis device that connects a graft vessel to a target vessel and remains in tissue to accomplish that connection. The anastomosis device of Yencho is not removed from the incision in the target vessel, or from tissue at all, after the graft vessel has been grafted to the target vessel. (*e.g.*, Figures 4, 8, 10; column 4, lines 22-34; column 5, lines 28-32; column 5, lines 64-67). A “completed connection between the graft vessel 34 and the target vessel 42” is shown in Figure 4, where the anastomosis device remains in tissue to press “the edges of the graft vessel 34 against an exterior surface of the target vessel 42.” (column 4, lines 22-34). Thus, the anastomosis device of Yencho remains in place after anastomosis, unlike the claimed incision tensioners of claim 1.

Because Yencho neither teaches nor suggests each and every element claimed in claim 1, Applicants consequently believe claim 1 is in condition for allowance. The Examiner has admitted on the record, in the Office Action of January 30, 2003, that claim 1 is generic. Thus, were it to be allowed, claim 1 would be allowed as to all species identified in this application.

Claims 10-16 and 18 depend directly or indirectly from claim 1, and are thus believed to be in condition for allowance as well under MPEP 608.01(n)(III). Thus, Applicants do not and need not concede to the characterization of these dependent claims in the Office Action.

With regard to claim 12, Applicants point out that a method claim need not include structural limitations. The Office Action provides no support in the MPEP or case law for the novel proposition that a method step is not given patentable weight because it fails to recite structure limitations. Further, with regard to claim 12, the Office Action states that "the Yencho device is capable of being predetermined force." Applicants point out that a structure cannot be a force, and cannot acquiesce in this characterization of Yencho '849 and of claim 12 of this application.

REQUEST FOR ALLOWANCE

Allowance of the pending claims, as to all species, is respectfully solicited. Please contact the undersigned if there are any questions.

Respectfully submitted,



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